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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/729,051

12/04/2000

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02/25/2008

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EXAMINER

BAYAT, BRADLEY B

ART UNIT

PAPER NUMBER

3621

MAIL DATE

DELIVERY MODE

02/25/2008

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GLENN G. BINGHAM and EDWARD B. WARBURTON

Appeal 2007-4014
Application 09/729,051
Technology Center 3600

Decided: February 25, 2008

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
MICHAEL O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Bingham, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-28. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM and enter a NEW GROUND OF REJECTION UNDER 37 C.F.R § 41.50(b).¹

THE INVENTION

The Appellants' invention relates to reserving meeting facility resources for events. (Specification 1:4-7.) Claims 1, 14, 21, and 28, reproduced below, are representative of the subject matter on appeal.

1. A method comprising:

defining a meeting package including a plurality of meeting facility resources and availability information regarding the meeting facility resources, said plurality of meeting facility resources including a meeting room and a guest room of a meeting facility;

receiving a reservation request for said meeting package from a user; and

reserving each of said plurality of meeting facility resources in response to receiving said reservation request.

14. A data processing system-readable medium having a plurality of instructions executable by a data processing system embodied therein, wherein said instructions when executed cause said data processing system to:

¹ Our decision will make reference to Appellants' Appeal Brief ("App. Br.," filed Oct. 8, 2004), Reply Brief ("Reply Br.," filed Feb. 8, 2005), and the Examiner's Answer ("Answer," mailed Jan. 4, 2005).

define a meeting package including a plurality of meeting facility resources and availability information regarding the meeting facility resources, said plurality of meeting facility resources including a meeting room and a guest room of a meeting facility;

receive a reservation request for said meeting package from a user; and

reserve each of said plurality of meeting facility resources in response to receiving said reservation request.

21. A data processing system comprising:

a storage device to store a meeting package definition for a meeting package including a plurality of meeting facility resources, said plurality of meeting facility resources including a meeting room and a guest room of a meeting facility;

an input device; and

a processing device to create said meeting package definition that includes availability information regarding the meeting facility resources, to receive a reservation request for said meeting package from a user via said input device, and to reserve each of said plurality of meeting facility resources in response to receiving said reservation request.

28. A communications network comprising:

a meeting planner client to receive meeting facility criteria and a reservation request for a meeting

package including a plurality of meeting facility resources from a user, said plurality of meeting facility resources including a meeting room and a guest room of a meeting facility;

a data storage device to store a customer profile for said user, a reservation rule and inventory data for said meeting facility, and a meeting package definition for said meeting package; and

a meeting package reservation server coupled to said meeting planner client via said communications network to create said meeting package definition utilizing said customer profile, said reservation rule, and said inventory data, to display said meeting package definition to said user, wherein said meeting package definition includes availability information regarding the plurality of meeting facility resources, and to receive said reservation request from said user via said meeting planner client, and to reserve each of said plurality of meeting facility resources in response to receiving said reservation request.

THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Carter	US 5,926,798	Jul. 20, 1999
Stone	US 6,446,045 B1	Sep. 3, 2002

THE REJECTIONS

The following rejection is before us for review:

Claims 1-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Stone in view of Carter.

ISSUE

The issue is whether the Appellants have shown that the Examiner erred in rejecting claims 1-28 under 35 U.S.C. § 103(a) as unpatentable over Stone and Carter.²

FINDINGS OF FACT

We find that the following enumerated findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

² Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

1. Stone discloses a data processing system³ (see Figs. 1a and 1b) for a seller to update, change, control inventory, and automatically process sales in addition to allowing the seller to update the presentation of inventory to all media outlets the seller is utilizing in presenting the inventory to buyers. (Stone, col. 3, ll. 13-45.) In addition, the data processing system provides buyers with several means to confirm and acquire the products and services purchased from the sellers. (Stone, col. 4, ll. 22-42.)
2. Inventory is used very broadly and is applicable to goods, products, services, reservations for services, or any other identifiable unit or item to be sold, conveyed, or reserved. (Stone, col. 45, ll. 32-36.)
3. An example of inventory includes reservations for rooms in hotels and other lodging. (Stone, col. 17, ll. 15-25, col. 18, ll. 16-22 and 50-57, col. 22, ll. 1-12 and ll. 31-44, col. 23, ll. 2-8, col. 25, ll. 48-58, col. 26, ll. 22-32, col. 27, ll. 20-25, col. 45, ll. 39-43, 46-49, 63-67, and col. 46, ll. 3-6.)
4. Stone discloses a central presentation and selection server 2000 along with an associated central controller and presentation processor 1000 which form a centralized processor-server computer architecture. This centralized processor-server computer architecture permits consistent

³ The system's components include the central controller and presentation processor 1000, central presentation and selection server 2000, seller interface 4000, the buyer interface 5000, and the hardware, software, and functions associated with these components. The reference numerals are being used to facilitate understanding of Stone because of its lengthy disclosure.

design and controlled presentations of sellers' information. In addition, this centralized processor-server computer architecture permits buyers to view or compare the products, goods, and services from a variety of sellers and then purchase or reserve those products, goods, and services. (Stone, col. 13, ll. 3-64.) The central controller and presentation processor 1000 includes a data storage device 1500 containing a number of relational databases. One of the databases is a transaction database 1620 that maintains information on buyers' purchases and reservations of products, goods, or services offered by the sellers over the central presentation and selection server. The information within the database depends upon the seller's type of products, goods, or services offered. An example that is disclosed relates to a seller providing lodging facilities. The information within the transaction database would then include buyer identification, reservation identification, room type or specific room, bed type, check-in and out dates, number of people, room rates and taxes paid, and any special requests. As such, the information within the transaction database 1620 is the result of each requested purchase made by a buyer with the buyer interface 5000 with the central presentation and selection server 2000. This information is then passed to the central controller and presentation processor 1000 and then to the seller interface 4000. (Stone, col. 15, ll. 1 through col. 16, l. 21.)

5. As discussed above, Stone discloses a central controller and presentation server 2000. This server contains a negotiation program 2725 that assists

the buyer in making the purchase transaction. When the buyer completes a purchase or reservation the inventory is taken off an availability list.

The negotiation program then sends a transaction message to the central controller and presentation processor 1000. (Stone, col. 23, ll.19-59.) In addition, after the negotiation program receives and reviews all the required information requested from the buyer, the program then requests a transaction approval code from a credit card processing company. (Stone, col. 36, ll. 44-49.)

6. Sellers have seller interfaces 4000 that maintain their presentation database. For the lodging embodiment taught, a seller's database contains data fields for hotel description, hotel photos, guest room descriptions, guest room photos, hotel amenities, guest room amenities, guest room service menu, payment types accepted, meeting and reception services offered, meeting rooms, photos of meeting rooms, policies, rates, special package offers, media or advertising channel choices, and any other information with respect to the presentation and sale for lodging. (Stone, col. 26, ll. 22-32.) A configuration and presentation program prompts the seller for the necessary information for the presentations desired by the seller. (Stone, col. 26, ll. 32-35.) Sellers also maintain a transaction database that contains data on buyers' reservations of services offered by the seller. For a seller providing the service of lodging the information in the transaction database would include: buyer identification, room type or specific room, bed type, check-in and out

dates, number of people, room rates and taxes paid, and special requests. The information within this database is a result of requests for purchase made through the central presentation and selection server 2000. (Stone, col. 25, ll. 38-62.)

7. In order for the seller to create and maintain the presentation database the seller has an interface 4000 that includes a central processor, operating system, ROM, RAM, clock, communication ports, video driver, video monitor, input devices, modem, network interface, and data storage device. (Stone col. 24, ll. 26-60.) In addition, the seller interface 4000 includes a resource saver protocol. As an example, the resource saver protocol allows a seller in the business of hotels and lodging facilities to divide the inventory into blocks of logical groups for marketing, presentation, and sales to buyers. The seller then can set limits on the number of room reservations purchased from any one buyer during a single transaction. This permits the seller to have a buffer for a margin of error with respect to overbooking. These sets of rules would then be sent to the central controller and presentation processor 1000 and central presentation and selection servers 2000 in order to be part of the processor-server computer architecture and thus permitting the buyer to view room inventory from a number of different sellers. (Stone, col. 45, l. 37 to col. 46, l. 60.)
8. The buyer has an interface 5000 having a central processor, operating system, ROM, RAM, clock, communication port, video monitor, input

devices, modem, network interface, and data storage. The buyer's interface 5000 permits the buyer to interact with the central processor-server architecture in order to view and purchase inventory. In addition, the software for the buyer is an Internet browser program while the data storage only needs enough memory capacity to store any saved "cookies" from the browser program. (Stone, col. 30, ll. 14-53.)

9. A communication network incorporating on-demand, direct dial-up public phone lines, network, or Internet connections connects together at least the central controller and presentation processor 1000 (note network interface 1340), central presentation and selection server 2000 (note network interface 2340), seller interface 4000 (note network interface 4340), and buyer interface 5000 (note network interface 5340). (Stone, col. 13, ll. 55-64.)
10. Carter teaches a system for deciding which server should serve the commercial request from a buyer based on reviewing the content information and business policies of each server. (Carter, col. 4, ll. 5-10.) As such, Carter teaches one of ordinary skill in the art a system that parses a buyer's request for purchase and based on preexisting business policies on each seller's server decides which server could fulfill the buyer's request.

PRINCIPLES OF LAW

Claims are given the broadest reasonable construction consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). “The Patent and Trademark Office (“PTO”) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’ *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005).

““Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations, such as commercial success, long felt but unsolved needs, failure of others, etc., “might be

utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 18.” *Ex parte Catan*, p. 9 (BPAI 2007).

“In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious without an explicit application of the teaching, suggestion, motivation test.

In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 127 S.Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966) (emphasis added)), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 1740. The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* With this as background, we analyze the specific rejections made by the Examiner of the claims on appeal.

ANALYSIS

The Appellant argues claims 1-27 as one group (App. Br., 10) and claims 28 as another group (App. Br., 11). As such, we select claim 21 and 28 as the representative claims for each group. As such, claims 1-20 and 22-27 stand or fall with claim 21. 37 C.F.R. § 41.37(c)(1)(vii) (2007).

Claim analysis

Claim 21 recites three major claim elements that constitute the data processing system: a storage device, an input device, and a processing device wherein each device as one or more associated functions. (Specification 7:1 to 8:9.) The storage device has one claimed function associated with it – to store a meeting package definition. The claim recites a meeting package definition includes information on the facility’s resources such as meeting and guest rooms. (Specification 15:12-16.) The input device appears to have the function of being the interface between a user and the system. (Specification 14:9-17.) The processing device has three claimed functions, namely, (1) to inform the rest of the system of the availability of meeting facility resources, (2) to receive requests for meeting

facility resources from the input device, and (3) to reserve meeting facility resources in response to receiving the request. (Specification 9:14 to 11:7.)

The Appellants' position is that the claim feature "[a] plurality of meeting facility resources including a meeting room and a guest room" should be limited, exclusively, to a meeting room and a guest room and as such exclude all other facility resources. (App. Br., 10.) However, the claim is not drafted in such a manner as to exclude other facility resources from being included in the meeting package definition. Instead, the claim is drafted openly by using the transition phrase "comprising" and the phrase "including" for defining the claimed invention. *See Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l., Inc.*, 246 F.3d 1336, 1348 (Fed. Cir. 2001)

When a patent claim uses the word 'comprising' as its transitional phrase, the use of 'comprising' creates a presumption that the body of the claim is open. In the parlance of patent law, the transition 'comprising' creates a presumption that the recited elements are only a part of the device, that the claim does not exclude additional unrecited elements.

In addition, the Specification discloses the meeting facility resources to include food and beverage services. (Specification 11:17-18.) As such, the argument to limit the claim language to only the facility resources (meeting room and guest room) recited in the claim is not in accord with the reading and meaning of the claim language itself as understood by one of

ordinary skill in the art. The word “include” is not a word used to represent restriction to only the enumerated items but instead is used to mean to contain within as part of the whole. As such, the claim encompasses more “meeting facility resources” than the two enumerated ones of meeting room and guest room when read in light of the specification by one of ordinary skill in the art.

For claim 28, the Appellants argue the same position that the claim feature “[a] plurality of meeting facility resources including a meeting room and a guest room” should be limited, exclusively, to a meeting room and a guest room and as such exclude all other facility resources. (App. Br., 11.) Like claim 21, claim 28 is not drafted in such a manner to exclude other facility resources from being included in the meeting package definition. Therefore, we are not persuaded by the Appellants arguments for the same reasoning *supra*.

Obviousness analysis

In reaching our decision in this appeal, we have given careful consideration to the Appellants’ Specification and claims, to the applied prior art references, and to the respective positions articulated by the Appellants and the Examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the Examiner is sufficient to establish a prima facie case of obviousness with respect to claims. Accordingly, we will affirm the Examiner's decision to reject the claims under 35 U.S.C. § 103. With the claims properly interpreted we do not see

where the Appellants have shown the Examiner erred in rejecting claims 21 and 28 with Stone and Carter. Our reasoning for this determination follows.

Stone teaches a data processing system as claimed in claim 21. Stone's system has a storage device storing meeting package definitions that include meeting and guest rooms. (Finding of Facts 6 and 7.) Stone's system has an input device. (Finding of Fact 8.) Stone's system has a processing device that is able to create meeting package definition that includes availability information with respect to the meeting facility's resources, receive reservation requests, and reserve the resources. (Finding of Facts 5 and 7.)

Stone can as well be viewed as teaching a communication network as claimed in claim 28. (See Finding of Fact 9.) Stone can be viewed as teaching a meeting planner client that receives meeting facility criteria and a reservation request that includes meeting and guest rooms from a user. (Finding of Fact 8.) Stone can be viewed as teaching a data storage device that stores customer profiles, reservation rules and inventory data for the meeting facility, and a meeting package definition. (Finding of Facts 4 and 7.) Stone can be viewed as teaching a meeting package reservation server that creates the meeting package definition based on the customer profile, reservation rule, and inventory data, displays this definition, receives the reservation request, and reserves the meeting facility resources in response to the request. (See Finding of Fact 6 and 7.)

While we appreciate the fact that the Examiner described the rejections of claims 21 and 28 in terms of obviousness rather than lack of novelty, we note that lack of novelty is the epitome of obviousness. *See In re Fracalossi*, 681 F.2d 792, 794 (CCPA 1982). With a proper claim interpretation and the application of *KSR*'s functional approach to obviousness, Stone teaches each and every element of the claim inventions of claims 21 and 28. As such, it is our view that Carter is merely cumulative to the teachings of Stone. Therefore, Carter is not necessary for a proper rejection under 35 U.S.C. § 103 of representative claims 21 and 28, as Stone discloses all that is claimed.⁴ Accordingly, the Examiner's decision to reject representative claims 21 and 28 is affirmed based on Stone alone.

In any case we disagree with the Appellants' contention that Stone and Carter are directed to solving different problems because as contended by the Appellants Stone accommodates the seller while Carter accommodates the buyer. (App. Br., 10) In Stone, the buyer is accommodated by the centralization of the processor-server architecture to allow the buyer to view and compare products, goods, and services from a variety of sellers and then purchase or reserve those products, goods, or services. (Finding of Facts 1, 4, 5, and 8.) Similarly, the buyer is accommodated in Carter by parsing the buyer's request to be reviewed by servers have the proper content and policies to fulfill the request. (Finding of

⁴ The Board may rely on less than all of the references applied by the Examiner in an obviousness rationale without designating it as a new grounds of rejection. *In re Bush*, 296 F.2d 491, 496 (CCPA 1961); *In re Boyer*, 363 F.2d 445, 458 n.2 (CCPA 1966).

Fact 10.) In addition, the seller is accommodated in Carter by having established the seller's business policies on the servers that fulfill the buyer's request. (Finding of Fact 10.)

In the Reply Brief, the Appellants contend the Examiner has read too broad of a definition of meeting facility. (Reply Br., 2.) We have addressed this contention when we addressed similar contentions in the claim analysis section *supra*. In addition, the Appellants contend Carter does not teach a need for group planning where meeting and guest rooms would be necessary. (Reply Br., 3.) We have reviewed the grounds of rejection within the Examiner's Answer and do not see where the Examiner stated such a position. Instead, it appears to us that the Examiner stated the position that Carter teaches parsing and coordinating the data of an online reservation based on a buyer's information and sellers' business policies programmed into their servers. (Answer 3-4 and Finding of Fact 10.) As such, we do see where the Appellants have identified an error that the Examiner made in rejecting the claims with Stone and Carter.

We conclude that the Appellants have not shown that the Examiner erred in rejecting claims 1-28.

NEW GROUND OF REJECTION

Pursuant to 37 C.F.R. § 41.50(b) a new ground of rejection is being included in this opinion.

Claims 1-13 are rejected under 35 U.S.C. § 101 as not being directed to statutory subject matter in light of the recent decision of *In re Comiskey*, 499 F.3d 1365 (Fed. Cir. 2007).

In *Comiskey*, the court provided guidance on the determination of patentable subject matter under 35 U.S.C. § 101. The court explained that “[t]he prohibition against patenting of abstract ideas has two distinct (though related) aspects.” *Id.* at 1376. The court stated that, “[f]irst, when an abstract concept has no claimed practical application, it is not patentable. ... Second, the abstract concept may have a practical application.” *Id.* In the latter case where the abstract concept has a claimed practical application, the court noted “[i]n that context [of process claims directed to industrial processes], the Supreme Court has held that a claim reciting an algorithm or abstract idea can state statutory subject matter only if, as employed in the process, it is embodied in, operates on, transforms, or otherwise involves another class of statutory subject matter, i.e. a machine, manufacture, or composition of matter. 35 U.S.C. § 101.” *Id.*

In other words, if the subject matter of the claimed process is an abstract idea that, though directed to an industrial application, is not embodied in, and does not operate on, transform, or otherwise involve another class of statutory subject matter, i.e., a machine, manufacture, or composition of matter, then the claim is not directed to statutory subject matter. With the condition framed we analyze claims 1-13.

Claim analysis

Claim 1 has three process steps: (1) defining datafield, wherein the datafield has to include certain information about resources, (2) receiving a request for information about the resources from a user, and (3) reserving the resources in response to the request. The Specification does not appear to define any terms in the claimed process steps in a manner inconsistent with the plain usage of that term in the art. As plainly understood in the art, the claimed steps do not appear to be embodied in and do not appear to operate on, transform, or otherwise involve a machine, manufacture, or composition of matter. For example, to one of ordinary skill in the art, the phrase “defining a meeting package” broadly covers any means to provide a definition of a meeting package. That would include forming the meeting package definition in the mind, i.e. a mental step. The same conclusion may be reached for the phrases “receiving a reservation request for the meeting package” and “reserving the resources requested.” “Following the lead of the Supreme Court, this court [the Court of Appeals for the Federal Circuit] and our predecessor court [Court of Customs and Patent Appeals] have refused to find processes patentable when they merely claim a mental process standing alone and untied to another category of statutory subject matter even when a practical application was claimed.” *Id.* at 1378. Claim 1 has a practical application, i.e., an industrial application, reserving a meeting facility’s resources, e.g., meeting and guest rooms. Claim 1 has three process steps (1) defining, (2) requesting, and (3) reserving that are not tied to another category of statutory subject matter and could be performed in the mind. As such, given the broadest reasonable construction of the claim in

light of the specification as it would be interpreted by one of ordinary skill in the art, it would appear that each step of the claimed process covers subject matter which is not “embodied in, operates on, transforms or otherwise involves another class of statutory subject matter.” *Id.* at 1376. As such, claim 1 is not directed to statutory subject matter.

Claims 2-13 depend from claim 1. The aforementioned claims are directed to either further defining the information (claims 2, 5, 8, 9, 11, and 13) or further defining the receiving or reservation protocols (claims 3, 4, 6, 7, 10, and 12). As such, these claims add nothing to bring the process steps within the fold of statutory subject matter. Therefore, for the same reason *supra* these claims are not directed to statutory subject matter.

ADVISORY STATEMENT

Should the Appellants further prosecute these claims before the Examiner, the Examiner should consider whether claim 14 would be obvious because claim 14 appears to be at most merely adding a modern electronic device, the data storage medium that is disclosed in the Specification to include DASD arrays, tape drives, and optical drives, see Specification page 6, lines 17-19, to an otherwise unpatentable mental process, see *supra*. With analogous claim language, the *Comiskey* court commented “[t]he routine addition of modern electronics to an otherwise unpatentable invention typically creates a prima facie case of obviousness.” *Id.* at 1380.

DECISION

The decision of the Examiner to reject claims 1-28 is affirmed. This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the appellant, *WITHIN TWO MONTHS FROM THE DATE OF THE DECISION*, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED; 37 C.F.R. § 41.50(b)

Appeal 2007-4014
Application 09/729,051

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